

THE U.S. DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

U.S. OF AMERICA,

v.

WISEMEN BONILLA-SANCHEZ,

Defendant.

Criminal No. 18-00264 (ADC)

OPINION AND ORDER

Before the Court is defendant Wisemen Bonilla-Sánchez's ("defendant" or "Bonilla") motion to suppress. **ECF No. 43**. For the following reasons, the motion to suppress is **DENIED**.

I. BACKGROUND

Defendant was arrested at Brisas del Turabo Public Housing Project ("Brisas") in Caguas, Puerto Rico, on April 11, 2018. **ECF No. 43**. He is charged with the following crimes: possession of a firearm in furtherance of a drug trafficking crime, 18 U.S.C. § 924(c)(1)(A)(i); possession with intent to distribute controlled substances, 21 U.S.C. § 841(a)(1); and felon in possession of a firearm and ammunition, 18 U.S.C. § 922(g)(1). **ECF Nos. 1, 43** at 3-4.

On March 1, 2019, Sánchez moved the Court to suppress the evidence that the government intends to use against him at trial, specifically a firearm and narcotics, arguing that said evidence was obtained as a result of an illegal arrest. **ECF No. 43**. Defendant asserts that on April 11, 2018, "he was standing in the [outdoor] common area" of Brisas, where he lived, when several officers of the Puerto Rico Police Department "arrived by car and ran into the apartment complex and also arrived by helicopter and rappelled down" into Brisas. *Id.* at 3, 4. Defendant

further avers that “[u]pon seeing [him], the police ordered him to stop, apprehended him, and arrested him. Upon his arrest, the police recovered cocaine from his person. The police also recovered a firearm that did not belong to Mr. Bonilla, nor was it ever in his possession. The police also recovered a scanner that did not belong to Mr. Bonilla nor was it ever in his possession.” *Id.* at 4.

Bonilla contends that the police did not have probable cause for his warrantless arrest and search, in violation of his Fourth Amendment rights, because it was based on a “generic suspicion, or a hunch,” for which the firearm and the narcotics seized should be suppressed under “the fruit of the poisonous tree” doctrine. *Id.* at 5 (citing *Wong Sun v. U.S.*, 371 U.S. 471, 484-85 (1963); *U.S. v. Crews*, 445 U.S. 463, 471 (1980)). The government opposed Bonilla’s motion to suppress, arguing that:

Because Bonilla-Sánchez denies that he possessed or had any interest in the firearm, or any reasonable expectation of privacy in the common area of a building, he lacks standing to suppress the firearm. But, given the disputed facts as to whether police properly detained Bonilla-Sánchez, a hearing is warranted on whether the cocaine was properly seized from his person.

ECF No. 46.

The Court held an evidentiary hearing on the matter on April 3, 2019. *See* **ECF No. 42.** During the hearing, the Court heard the testimony of Puerto Rico Police Department (“PRPD”) agents Miguel Morales-Cotto (“Morales”) and Edwin Santiago-Martínez (“Santiago”).

(i) Agent Morales’ Testimony

Morales has been a PRPD agent for approximately nine years, mainly in the Caguas region, and is currently a Criminal Intelligence Agent there. His duties include surveillance and interventions in various public housing developments that are well known high-crime areas including Brisas, where there had been recent shootouts and sales of controlled substances and which was subject to federal and state criminal investigations. Brisas was known to have around-the-clock sales of illegal drugs, with different points of sale operating at different hours, one of which was next to Building Number 29. Morales was on duty in the morning of April 11, 2018, and his first stop was at Brisas. He arrived in the front-passenger seat of an unmarked PRPD vehicle in the company of two colleagues— Agent Roberto Rodríguez, who was driving, and Santiago, who was in the back seat. All were dressed in civilian clothes.

The agents arrived at Brisas at around 6:20 a.m. The sun was up at that time. Upon driving into the Brisas complex, Morales observed that about 30 to 40 feet away, there were three men talking among themselves next to Building Number 29, one of whom was standing while the other two were seated.¹ Morales saw that one of them—who turned out to be Bonilla²—was wearing jeans and a jacket. Additionally, Morales saw that Bonilla was watching the police vehicle and carefully pulled out a firearm from the jacket with his right arm. While inside the vehicle, Morales alerted his colleagues about Bonilla's possession of a firearm. Morales got out

¹ During cross-examination, Morales identified on maps of Brisas and its surroundings the locations pertinent to his arrival at the housing complex and the intervention with Bonilla. The maps were stipulated by the parties. ECF No. 51, Exhibits A-1, A-2.

² Morales identified Bonilla in the courtroom during his direct examination by the government and testified that he did not know Bonilla prior to the April 11, 2018 intervention at Brisas.¹

of the police vehicle and yelled "Police!" Bonilla started to run away. Morales chased after Bonilla; Santiago also got out of the police vehicle and ran behind Morales. During the chase, Bonilla threw his firearm to the right and it fell underneath a car that was about six to eight feet away. Morales continued chasing him, while Santiago remained behind in custody of the tossed firearm. Bonilla continued to run among the buildings at Brisas while getting rid of belongings, including a brand scanner and his jacket. Bonilla stopped running, and Morales arrested and informed him of his rights. Morales then searched Bonilla (pat down) and found 28 baggies of cocaine in his left-front jean pocket.

PRPD Agent Luis Rivera-Ruiz was at Brisas in addition to Morales, Sánchez, and Rodríguez the morning when Bonilla was arrested, but Rivera-Ruiz was not present during the intervention with Bonilla. Morales executed Bonilla's arrest on his own. The other two men who were with Bonilla in the outdoor common area of Building Number 29 that morning did not flee while Morales chased and arrested Bonilla. The PRPD officers did not intervene with them. Morales did not see any PRPD helicopters over Brisas on the morning of Bonilla's arrest. He did not know of surveillance cameras at Brisas, nor was his intervention with Bonilla subject to video recording by police dashboard cameras or body cameras.

(ii) Agent Santiago's Testimony

Santiago has been a PRPD agent for approximately nineteen years, mainly in the Caguas region, and is currently a Criminal Intelligence Agent there. He was one of the two other PRPD agents accompanying Morales at Brisas on the morning of April 11, 2018. He corroborated

Morales' testimony. However, unlike Morales, Santiago did not observe Bonilla with a firearm, or see him toss it, or see where it landed until Morales pointed to him the place underneath a car during the chase. Santiago specified that the firearm he recovered was a nickel-plated revolver with a black grip. Additionally, unlike Morales, Santiago recognized Bonilla from previous visits to Brisas and knew that Bonilla lived there.

After the witnesses' testimonies, Bonilla, through counsel, informed in open court that contrary to what was stated in his motion to suppress as summarized above, Bonilla subscribed to the prosecution's stance that Bonilla had been in possession of the gun that the police seized after Bonilla tossed it. And, although in his motion to suppress, Bonilla had requested the suppression of the drugs and the weapon only, he now added the scanner among the items as to which he seeks suppression.

II. LEGAL STANDARD

The Fourth Amendment protects against unreasonable seizures, including seizure of the person. *California v. Hodari D.*, 499 U.S. 621, 624 (1991). An arrest is "the quintessential 'seizure of the person' under our Fourth Amendment jurisprudence." *Id.* "An officer may conduct a warrantless arrest as long as there is 'probable cause to believe that the suspect has committed or is committing a crime.'" *U.S. v. Bizier*, 111 F.3d 214, 216-17 (1st Cir. 1997) (quoting *U.S. v. Martínez-Molina*, 64 F.3d 719, 726 (1st Cir. 1995)). "To establish probable cause, the government must demonstrate that 'at the time of the arrest, the facts and circumstances known to the arresting officers were sufficient to warrant a prudent person in believing that the defendant

had committed or was committing an offense.” *Bizier*, 111 F.3d at 217 (quoting *U.S. v. Cleveland*, 106 F.3d 1056, 1060 (1st Cir. 1997)).

A person’s presence in a known high-crime area, without more, is not enough to support a reasonable suspicion that a person is committing a crime. *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000) (citing *Brown v. Texas*, 443 U.S. 47, 52 (1979)). However, “nervous, evasive behavior,” such as “unprovoked flight upon noticing the police,” “is a pertinent factor in determining reasonable suspicion.” *Id.* “Headlong flight—wherever it occurs—is the consummate act of evasion: It is not necessarily indicative of wrongdoing, but it is certainly suggestive of such.” *Id.* An evaluation of reasonable suspicion is a fact-sensitive inquiry that “must be performed in real-world terms.” *U.S. v. Ruidiaz*, 529 F.3d 25, 29 (1st Cir. 2008). It is “a practical, commonsense determination—a determination that entails a measurable degree of deference to the perceptions of experienced law enforcement officers.” *Id.* (citations omitted). “[N]o *direct* link between the suspect and the suspected criminal activity need be forged in order to achieve reasonable suspicion.” *Id.*

Moreover, “[t]he visual display of a firearm is a crime under Puerto Rico law.” *U.S. v. Padilla-Colón*, 578 F.3d 23, 25 n.1 (1st Cir. 2009) (citing P.R. Laws Ann. tit. 25, § 456a(d)(1)). As such, the reliable testimony by a witness who sees a person with a firearm that is visible in public creates a reasonable suspicion of criminal activity that justifies a warrantless stop and frisk of the suspect by the police. *See U.S. v. Avilés-Vega*, 783 F.3d 69, 72-73 (1st Cir. 2015).

“In the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment but is also a reasonable search under that amendment. Thus, . . . if the arrest was lawful, a searching officer does not need to have any further justification for performing a full body search of an arrestee.” *Swain v. Spinney*, 117 F.3d 1, 5–6 (1st Cir. 1997) (internal quotation marks omitted) (citing *U.S. v. Robinson*, 414 U.S. 218, 235 (1973); *U.S. v. Bizier*, 111 F.3d 214, 217 (1st Cir.1997)).

Furthermore, a criminal defendant challenging a search or seizure

has the burden of establishing standing. To have standing a defendant must have a legitimate expectation of privacy in the area searched. Apart from a subjective expectation of privacy and the objective reasonableness of such an expectation, some of the factors that bear on the existence of a legitimate expectation of privacy include: ownership, possession or control of the premises searched; the ability to control or to exclude others’ use of the premises; a legitimate presence on the premises at the time of the search; and the totality of the surrounding circumstances.

U.S. v. Melucci, 888 F.2d 200, 202 (1st Cir. 1989) (citations and internal quotation marks omitted) (collecting cases). As held in the First Circuit, “generally ‘a tenant lacks a reasonable expectation of privacy in the common areas of an apartment building.’” *U.S. v. Bain*, 155 F. Supp. 3d 107, 116 (D. Mass. 2015), *aff’d*, 874 F.3d 1 (1st Cir. 2017) (quoting *U.S. v. Hawkins*, 139 F.3d 29, 32 (1st Cir.1998)).

III. DISCUSSION

The Court deems as wholly reliable Agent Morales’ testimony that on the morning of April 11, 2018, he saw Bonilla pull out a gun from his jacket in broad daylight and in a common

area next to Building Number 29 at Brisas, a well-known narcotics sales point in a public housing project. That, in itself, gave Morales reasonable suspicion that Bonilla was involved in criminal activity at that moment. Morales identified himself as a police officer. At that point, Bonilla's unprovoked flight added to the reasonable suspicion. *See Avilés-Vega*, 783 F.3d at 72-73; *Ruidíaz*, 529 F.3d at 29. Morales' suspicion was further bolstered by his observation of Bonilla tossing the gun underneath a car during the chase. Santiago's recovery of the gun from the area Morales observed it being discarded provided additional reasonable suspicion. Thus, in light of the totality of circumstances, Morales undoubtedly had probable cause to arrest Bonilla upon conclusion of the chase. *See Bizier*, 111 F.3d at 216-17. Because the arrest was adequately supported by probable cause, Morales' search of Bonilla incident to the arrest, revealing 28 bags of cocaine in one of Bonilla's jean pockets, was clearly lawful. *See Spinney*, 117 F.3d at 5-6. Thus, the cocaine was properly seized and constitutes admissible evidence against Bonilla.

Finally, Bonilla's eleventh-hour request for suppression of the brand scanner and his adoption of the government's contention that the gun had been in Bonilla's possession prior to the chase do not warrant the suppression of that evidence. Morales' testimony establishes that while Bonilla was running away in the common areas of Brisas, he tossed various belongings, including his gun, which fell underneath a car, and a brand scanner. Thus, regardless of whether or not Bonilla had been in possession of those items, Bonilla had no reasonable expectation of privacy over those objects once he tossed them in plain sight in the common areas of Brisas, and as such, the police lawfully seized that evidence. In short, Bonilla lacks any factual or legal

standing to support his request for the suppression of that evidence. *See Melucci*, 888 F.2d at 202; *Hawkins*, 139 F.3d at 32.

IV. CONCLUSION

In light of the above, the Court **DENIES** defendant's motion to suppress, ECF No. 43.

SO ORDERED.

At San Juan, Puerto Rico, on this 12th day of April, 2019.

S/AIDA M. DELGADO-COLÓN
United States District Judge